IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

RCRev..No. 68 of 2007

RCA.14/2005 of RENT CONTROL APPELLATE AUTHORITY, NORTH PARAVUR
RCP.8/2003 of RENT CONTROL COURT, ALUVA

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REVN. PETITIONER/APPELLANT/RESPONDENT:

PAILY, S/O. VARKEY,
KANNAMPUZHA, KUNNAPPILLYSSERY KARA,
PARAKKADAVU VILLAGE, ALUVA TALUK,
ERNAKULAM DISTRICT.

BY ADV. SRI.K.P.DANDAPANI (SR.)
SRI.MILLU DANDAPANI

RESPONDENT/RESPONDENT/PETITIONER:

AANI, W/O. VARGHESE,
KACHAPPILLY, POOVATHUSSERY KARA,
PARAKKADAVU VILLAGE, ALUVA TALUK.

BY ADV. SRI.G.KRISHNAKUMAR
SRI.P.P.RAJESH

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 21/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

R.C.R.No. 68 of 2007

ORDER

Balachandran, J.

The revision petitioner is the tenant in R.C.P. No.8/03, against whom eviction has been ordered by the Rent Control Court, Aluva under section 11(3) of the Act and was confirmed in appeal vide judgment in R.C.A.No.14/05. The claim for eviction was advanced by the respondent/landlady under Section 11(3) of the Act on the allegation that she bona fide needs the said building for starting a Ladies Garments Making Unit along with the adjoining room. She is a widow depending mainly on the income from the buildings constructed by her husband for meeting the expenses of her children. On a proper appreciation of the evidence in the case, the Rent Control Court found that the need advanced by the respondent/landlady is bona fide and genuine and that the petitioner/tenant, who is

conducting financing business is not entitled to protection under the second proviso to Section 11 (3) of the Act, as he has not established that he is entitled to the benefit thereunder, establishing the two limbs under that proviso, that he is mainly depending on the income derived from the business that is being conducted by him in the scheduled shop room and that there is no vacant building available for him in the locality to shift his business. The appellate authority also, concurring with the findings of the Rent Control Court, granted eviction under Section 11(3) of the Act and dismissed the appeal filed by the tenant.

2. In this revision, challenging the concurrent findings of the authorities below, ordering eviction under Section 11(3) of the Act, it is contended by the learned counsel for the petitioner that two years prior to the institution of the present eviction petition, the landlady had issued a notice demanding vacant possession of the

scheduled building, but did not file any petition and that the petition is filed only after two years and that her conduct would show that there is no genuine and bona fide need for her to start any business in the scheduled building. We are not prepared to agree with the learned counsel for the petitioner, as nothing is brought out in evidence to substantiate the contention that the need was being advanced on some pretext or other, with a view to have the rent increased. There is no scope for interference by this Court in the concurrent order of eviction passed by the authorities below entering into specific findings in favour of the respondent/landlady as regards her claim under Section 11(3) of the Act, on a proper appraisal of the entire evidence adduced in the case. This revision, in the circumstances, is devoid of merit and deserves to be dismissed.

3. Finally, it is urged by the learned counsel for the petitioner that the petitioner, who is

conducting business in the scheduled building from 1977 onwards, be granted breathing time to surrender vacant possession of the scheduled building to the respondent/landlady. We are of the view that the request made on behalf of the petitioner/tenant deserves favourable consideration.

In the result, we dismiss this Rent Control Revision. At the same time, we grant the petitioner time till 31.12.2007 to surrender vacant possession of the scheduled building to the respondent/landlady on the following conditions:

i. that he shall deposit the entire arrears of rent, if any, in the court below with a detailed statement as to its correctness within three weeks from today.

ii. that he shall file an affidavit within one month from today, reporting that all arrears of rent are cleared and unconditionally undertaking that he will surrender vacant possession of the

scheduled building to the respondent/landlord positively on or before 31.12.2007 and that he will continue to pay the monthly rents on the due dates itself till he actually surrenders vacant possession of the scheduled building to the respondent/landlord and

iii. that in case the petitioner fails to comply with the above conditions, he shall not be entitled to the benefit of continuing in occupation of the scheduled building till 31.12.2007 and shall be liable to be evicted immediately on the expiry of the aforesaid one month in execution of the order of eviction passed against him.

(J.B.Koshy, Judge)

21st June, 2007

(K.P.Balachandran, Judge)

tkv